IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 31785 of 2006(H)

IA.1096/2006 IN OS.223/2004 of MUNSIFF COURT, ETTUMANOOR

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PETITIONERS:

1. KENNY MANUAL,VETTOOR
   HOUSE, ETTUMANOOR P.O.

2. BRIGEETHA MANI, DO. DO.
   ON BEHALF OF HER AND POWER
   OF ATTORNEY TO IST PETITIONER.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENTS:

1. GEORGE THOMAS,VETTOOR
   HOUSE, ETTUMANOOR P.O.,

2. CHINNAMMA THOMAS, DO. DO.

3. THEJO THOMAS, DO. DO.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA
SMT.A.R.DIVYA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/03/2007 ALONG WITH WPC NO. 1884 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 31785/06

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE PLAINT IN OS 223/04 DT. 18.11.04 FILED BEFORE THE MUNSIFF'S COURT, ETTUMANOOR

EXT. P2 TRUE COPY OF THE REPORT TOGETHER WITH ROUGH SKETCH PREPARED BY THE ADVOCATE COMMISSIONER

EXT. P3 TRUE COPY OF THE JUDGMENT DT. 16.2.06 IN WPC 15858/05 OF THIS HON'BLE COURT

EXT. P4 TRUE COPY OF THE APPLICATION IA 1096/06 IN OS 223/04 DT. 27.9.06 FILED BEFORE THE MUNSIFF'S COURT, ETTUMANOOR

ECT. P5 TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENTS DT. 30.10.06

EXT. P6 TRUE COPY OF THE ORDER DT. 9.10.06 IN IA 1096/06 IN OS 223/04 OF THE MUNSIFF'S COURT, ETTUMANOOR

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)Nos.31785/2006 & 1884/2007

JUDGMENT

The former writ petition is filed against Exhibit P6 order of the court below refusing amendment sought for vide I.A.No.1096/06 in relation to description of plaint Item No.5 as a pathway. The latter writ petition is filed against Exhibit P7 order passed by the court below on a review petition filed as I.A.No.1257/06 to review Exhibit P6 order in the former writ petition. The amendment application, viz. I.A.No.1096/06, filed by the petitioners/plaintiffs is Exhibit P4. The amendment sought to be made in the plaint, as per Amendment No.2 in Exhibit P4 application, is describing Item No.5 in the plaint as a pathway, having a length of three hundred feet and a width of twenty six feet at bell mouth portion on the northern end and thereafter diminishing its width as it proceeds towards south approximately to

fifteen feet only. This is as against the original description of Item No.5 in the plaint as a pathway, having a length of three hundred feet and a width of fifteen feet.

2. The petitioners moved petition for amendment of the plaint with a view to make description of Item No.5 as pathway, consistent with Exhibit P2 commission report. The question as to whether the pathway is having exactly the description as shown in Exhibit P2 commission report or not is not a matter for decision while considering the amendment application. I do not see any reason why the amendment should not be allowed. Hence, in reversal of Exhibit P6 order to the extent it has disallowed the amendment, I allow the amendment as prayed for in relation to Item No.5 pathway as well. The petitioners shall carry out the amendment in the plaint positively before closing of the courts for mid summer recess.

3. It is submitted by the counsel for the petitioners that the latter writ petition is unnecessary in view of the judgment passed as aforesaid in the former writ petition.

In the result, W.P.(C)No.31785/05 stands allowed as indicated above and W.P.(C)No.1884/07 stands dismissed.

28th March, 2007 (K.P.Balachandran, Judge)

tkv